IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8856 OF 2004

Shri Jayaram Dhondiba Tambe & Ors. .. Petitioners. (Org.Defendants)

Vs.

Shri Ashok Ramkrishna Aadke & Ors. .. Respondents (Org.Plaintiffs)

--

Shri V.S.Gokhale for the petitioners.

--

CORAM : R.M.S.KHANDEPARKAR, J

DATED : 2nd NOVEMBER, 2004.

P.C.

1. Heard the learned advocate for the petitioners. Perused the records. Both the Courts have arrived at the concurrent findings in relation to the default in payment of rent by the petitioners, and therefore, the order of eviction has been passed against the petitioners. It is the contention of the learned advocate for the petitioners that the respondents had not produced the Sale Deed establishing their ownership right to the premises

inspite of the fact that the petitioners had disputed the right of the respondents to recover the rent from the petitioners in relation to the suit premises.

2. The concurrent findings arrived at by the Courts below on detail analysis of the evidence on record disclose that consequent to the purchase of the suit premises by the respondents, a notice dated 21st March, 1988 was addressed in the name of the father of the petitioners as the father of the petitioners was the original tenant in respect of the suit premises and even though he expired in the year 1977, the rent receipts were continued to be issued in his name by the erstwhile owner of the property and by the said notice dated 21st March, 1988, it was sought to be informed that the property has been purchased by the respondents from the heirs of the original owner, however, that notice was returned with the postal remarks "drawee had expired". Thereafter, the notice dated 24th April, 1991 came to be issued in the name of the petitioner No.1 asking him to pay the arrears of rent from 1st January, 1986 to 31st May, 1991. Inspite of the receipt of the said notice by the said petitioner No.1, he had neither paid the rent nor had sought any explanation from the respondents as to on what basis the rent had been claimed by them from the

petitioners. The petitioners insisted upon the production of the Sale Deed, only when the proceedings for eviction of the petitioners from the suit premises on the ground of default in payment of rent were filed. Considering the fact that the petitioners have neither paid the rent for the relevant period nor taken any steps to ascertain as to whether the property has been conveyed in favour of the respondents who were demanding the rent, and persisted in not paying the rent either to the respondents or to the erstwhile owner, obviously, discloses the refusal on the part of the petitioners to pay the rent and perform their obligation in that regard. It is to be noted that the petitioners had sent the rent for seven months by Money Order on 13th November, 1987 addressed to the son of the original owner Mayur R. Dadal, which was refused by him, and yet the petitioners did not take any step either to pay or deposit the rent in the Court by following the procedure known to law. Obviously, there was absolutely no justification for the petitioners not to pay the rent for the relevant period, therefore, the concurrent findings arrived at by the Courts below as regards the default in payment of rent and the same being the ground for eviction of the petitioners, cannot be found fault with. As the findings in that regard are clearly borne out from the

records besides being the finding of fact, there is no case for interference in the impugned orders in writ jurisdiction under Article 227 of the Constitution of India. The petition, therefore, fails and is accordingly rejected with no order as to costs.

3. On request by the learned advocate for the petitioners, time to vacate the suit premises is extended till 30th April, 2005 subject to the petitioners and all adult members of their family in occupation of the suit premises giving usual undertaking before the Registrar (Judl.) within a period of four weeks from today to the effect that the petitioners shall not create any third party interest nor shall induct any third party right in the suit premises during this period and shall deliver vacant and peaceful possession thereof to the respondents on or before 30th April, 2005. In case, the petitioners fail to file aforesaid undertaking within four weeks, the extension granted for delivering the possession of the suit premises by this Court shall automatically stand cancelled without being referred to the Court.